

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 4/20/15

John Vidurek,

Plaintiff

-against-

John Koskinen, et al.,

Defendants

15-CV-2188

WRIT OF ERROR

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2015 APR 23 A 9:00

**THE COURT OF RECORD COMES NOW** to review the facts, record, and process resulting in the rulings dated April 1, 2015, attached:

The record shows that this court of record held a hearing on April 1, 2015, contrary to the rules of common law, proceeding according to the principles of the method and procedure adopted by the court of chancery for the purpose of changing jurisdictions<sup>1</sup> from [common] law<sup>2</sup> to equity which proceeds under the rules of chancery; citing 28 USC 1914 & 1915 (statutes repugnant to the constitution) as its authority that extorts filthy-lucre which perverts judgment<sup>3</sup> under threat to unlawfully dismiss plaintiffs action thereby denying plaintiff's unalienable right of due process,<sup>4</sup> by dismissing a court of record. Or pay the extortion fee for a jurisdiction that produces the same results dismissing plaintiff's court of record and denies plaintiff's unalienable right of due process.

<sup>1</sup> **EQUITY JURISDICTION** "In a general sense, the jurisdiction belonging to a court of equity, but more particularly the aggregate of those cases, controversies, and occasions which form proper subjects for the exercise of the powers of a chancery court." See *Wadham Oil Co. v. Tracy*, 141 Wis. 150, 123 N.W. 785, 787, 18 Ann.Cas. 779; *Venner v. Great Northern R. Co.*, C.C.N.Y., 153 F. 408, 413, 414. "Equity jurisdiction, in its ordinary acceptation, as distinguished on the one side from the general power to decide matters at all, and on the other from the jurisdiction "at law" or "common-law jurisdiction," is the power to hear certain kinds and classes of civil causes according to the principles of the method and procedure adopted by the court of chancery, and to decide them in accordance with the doctrines and rules of equity jurisprudence," *Norback v. Board of Directors of Church Extension Soc.*, 84 Utah 506, 37 P.2d 339.

<sup>2</sup> **COMMON-LAW JURISDICTION.** "Jurisdiction of a court to try and decide such cases as were cognizable by the courts of law under the English common law; the jurisdiction of those courts which exercise their judicial powers according to the course of the common law." *U. S. v. Power*, 27 Fed.Cas. 607.

<sup>3</sup> **1 Sam 8:3**

<sup>4</sup> "Due course of law, this phrase is synonymous with "due process of law" or "law of the land" and means law in its regular course of administration through courts of justice." - *Kansas Pac. Ry. Co. v. Dunmeyer* 19 KAN 542.

Furthermore 28 USC has no force because it lacks regulations<sup>5</sup> therefore even under a court of equity said statutes have no authority.

Magistrate Loretta A Preska, acted under the color of law as judge at a summary proceeding<sup>6</sup> contrary to common law with neither the plaintiff or the defendants present.

The record shows (ORDER DIRECTING PAYMENT, 2 pages dated April 1, 2015 with IFP Application, 2 pages, attached; see Exhibit A) that the magistrate, on her own authority, conducted a hearing in accordance with the rules of chancery and not law thereby trespassing on the case.<sup>7</sup> The magistrate conducted her own court, without notice or concurrence of the parties, and without due process, the magistrate presuming to be the owner of the courtroom. Not satisfied with the lawful rules of court, she became a loose cannon and imposed rules of another jurisdiction foreign to this court.

Contrary to Magistrate Loretta A Preska claim, plaintiff's exercise of his unalienable right is not frivolous and is hereby rebutted. Generally, "frivolous" is relevantly defined as: "A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense.

Contrary to Magistrate Loretta A Preska's presumption, plaintiff does not seek to proceed in forma pauperis which proceeds according to the rules of chancery nor will plaintiff accept an exchange of filthy-lucre for prejudicial justice in a court of chancery. Plaintiff has opened a

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<sup>5</sup> **STATUTE WITHOUT REGULATIONS HAVE NO FORCE** "*Here the statue is not complete by itself, since it merely declares the range of its operation and leaves to its progeny the means to be utilized in the effectuation of its command. But it is the statute which creates the offense of the willful removal of the labels of origin and provides the punishment for violations. The regulations, on the other hand, prescribe the identifying language of the label itself tags to their respective geographical areas. Once promulgated these regulations called for by the statute itself have the force of law, and violation thereof incur criminal prosecutions, just as if all the details had been incorporated into the Congressional language. The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other*" - U.S. v. Mersky, 361 U.S. 431 (1960)

<sup>6</sup> Summary proceeding. [Blacks 4th] Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury, without presentment or indictment, or in other respects out of the regular course of the common law. In procedure, proceedings are said to be summary 'when they are short and simple in comparison with regular proceedings; e., in comparison with the proceedings which alone would have been applicable, either in the same or analogous cases, if summary proceedings had not been available. Sweet. [Blacks, and see Phillips v. Phillips, 8 N.J.L. 122.]

<sup>7</sup> **Trespass on the case.** "*The form of action, at common law, adapted to the recovery of damages for some injury resulting to a party from the wrongful act of another, unaccompanied by direct or immediate force, or which is the indirect or secondary consequence of defendant's act. Commonly called, by abbreviation, "Case."*" Munal v. Brown, C.C.Colo., 70 F. 968; Nolan v. Railroad Co., 70 Conn. 159, 39 A. 115, 43 L.R.A. 305; New York Life Ins. Co. v. Clay County, 221 Iowa 966, 267 N.W. 79, 80.

“court of record”, see filed action at law, which proceeds under the rules of common law without cost.

“The U.S. Supreme Court has ruled that *“a natural man or woman is entitled to relief for free access to its judicial tribunals and public offices in every State in the Union”* (2 Black 620, see also *Crandell v. Nevada*, 6 Wall 35). *Plaintiff should not be charged fees, or costs for the lawful and constitutional right to petition this court in this matter in which he is entitled to relief, as it appears that the filing fee rule was originally implemented for fictions and subjects of the State and should not be applied to the Plaintiff who is a natural individual and entitled to relief*” - *Hale v. Henkel*; 201 U.S. 43. Plaintiff is neither a fiction nor a subject,<sup>8</sup> as is an elected or appointed official owing allegiance to the sovereign people of the fifty united States. Plaintiff is one of the People of New York subject to no laws except those prescribed by nature.<sup>9</sup>

- *“Rights indirectly denied - ‘Constitutional ‘rights’ would be of little value if they could be indirectly denied.”* - *Gomillion v. Lightfoot*, 364 U.S. 155 (1966), cited also in *Smith v. Allwright*, 321 U.S. 649.644.
- *“There can be no sanction or penalty imposed upon one because of his exercise of Constitution rights.”* - *Sherar vs. Cullen* 481 F 2D 946, (1973).
- *“No state shall convert a liberty into a license, and charge a fee therefore.”* *Murdock v. Pennsylvania*, 319 U.S. 105.
- *“If the State converts a right (liberty) into a privilege, the citizen can ignore the license and fee and engage in the right (liberty) with impunity.”* [*Shuttlesworth v. City of Birmingham, Alabama*, 373 U.S. 262]

**American Jurisprudence (Constitutional Law) §326; Free Justice and Open Courts; Remedy for All Injuries** - *In most of the state Constitutions there are provisions, varying slightly in terms, which stipulate that justice shall be administered to all without delay or denial, without sale or prejudice, and that the courts shall always be open to all alike. These provisions are based largely upon the Magna Charta, chap. 40, which provides; “We will sell to no man. We will not deny to any man either justice or right.” The chief purpose of the Magna Charta*

<sup>8</sup> **SUBJECT Constitutional Law** - One that owes allegiance to a sovereign and is governed by his laws.

<sup>9</sup> *“There, every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowman without his consent.”* *Cruden v. Neale*, 2 N.C. 338 (1796) 2 S.E.

*provision was to prohibit the King from selling justice by imposing fees on litigants through his courts and to deal a death blow to the attendant venal and disgraceful practices of a corrupt judiciary in demanding oppressive gratuities for giving or withholding decisions in pending causes. It has been appropriately said that in a free government the doors of litigation are already wide open and must constantly remain so. The extent of the constitutional provision has been regarded as broader than the original confines of Magna Charta, and such constitutional provision has been held to prohibit the selling of justice not merely by magistrates but by the State itself.* Therefor a denial of access into the Peoples courts' of justice for refusing to pay a fee would be a violation of plaintiff's unalienable right of due process protected under V Amendment and disobedience to American Jurisprudence which all judges must obey.

Furthermore plaintiff does not bring this action pro se as is the process under fiction but in pro per. Most legal dictionaries define the term "pro se" as someone who represents them self. Black's Law 4th edition defines it "in person", therefore we used the term "in pro per", in that capacity we accept the term "pro se" not to be confused with one representing their fiction whereby the jurisdictional fraud might be assumed and statutes applied as a subject.

Without proper authority, the magistrate stepped out of her function as a magistrate and, by her actions and statements, figuratively assumed the cloak of a tribunal.<sup>10</sup>

*"Henceforth the writ which is called Praecipe shall not be served on any one for any holding so as to cause a free man to lose his court."* Magna Carta, Article 34

The genius of a court of record is not to be undermined. It is the birthright of every American to settle issues in a court of record, if he so chooses.

Throughout the order, the record shows that the rules of the court were not followed, that the magistrate attempted to function as a tribunal, and that the court was ineffective in furthering the goal of justice for all. These failures to follow the prescribed procedures are sufficiently disruptive to the goal of providing fair justice that the court finds it necessary to issue a writ of error quae coram nobis residant as follows:

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<sup>10</sup> A judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689][Black's Law Dictionary, 4th Ed., 425, 426

**THE COURT, HAVING REVIEWED THE FACTS, THE RECORD, AND THE PROCESS BY WHICH THE RULING WAS ISSUED,** and finding that the magistrate rendered a ruling by applying rules from jurisdictions foreign to this court without leave of court; and finding that the orderly decorum of the court was replaced by defective impromptu process and usurpation of legislative and court powers without leave of court,

Magistrate Loretta A Preska has mistaken the filing of an action at law<sup>11</sup> in a court of record under the rules of common law for a complaint in a court "not" of record under the rules of chancery. Magistrate Loretta A Preska is now fully informed of her error.

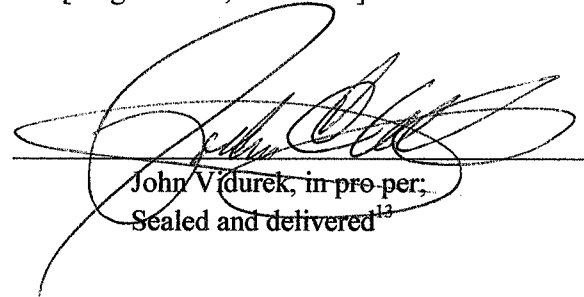
**NOW THEREFORE, THE COURT** issues this **WRIT OF ERROR QUAE CORAM NOBIS RESIDENT**, to wit:

The court rescinds all rulings entered April 1, 2015.

**TAKE NOTE:** Summons has already issued March 12, 2015, see attached, under the rules of common law as a private individual.<sup>12</sup>

*"Henceforth the writ which is called Praecipe shall not be served on any one for any holding so as to cause a free man to lose his court."* [Magna Carta, Article 34].

Dated: April 13, 2015; Dutchess County, New York



John Vidurek, in pro per;  
Sealed and delivered<sup>13</sup>

<sup>11</sup> **AT LAW** Blacks 4th This phrase is used to point out that a thing is to be done according to the course of the common law; it is distinguished from a proceeding in equity

<sup>12</sup> **INDIVIDUAL** As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; State v. Bell Telephone Co., 36 Ohio St. 310, 38 Am.Rep. 583.

<sup>13</sup> **SEAL** (Blacks 4th) A particular sign, made to attest in the most formal manner, the execution of an instrument. Merlin defines a seal to be a plate of metal with a flat surface, on which is engraved the arms of a prince or nation, or private individual, or other device, with which an impression may be made on paper or parchment in order to authenticate them. The impression thus made is also called a "seal." **SEALED AND DELIVERED**. These words, followed by the signatures of the witnesses, constitute the usual formula for the attestation of conveyances.



**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
ACTION AT LAW<sup>1</sup>**

John Vidurek

Plaintiff

-v-

John Koskinen;  
J. Melendez, identified as ID No. 0708622;  
John/Jane Doe, identified as Tax Examiner MS 4388;  
Jane Doe, a/k/a Brenda Dial assumed robo signer.  
Defendants

Action Case NO. 15-CV-2188

**Summons**

To: (Defendants)      • John Koskinen, in pro per<sup>2</sup>  
                                 c/o Ogden Service Center; PO Box 9941, Stop 1005; Ogden, Utah 84409  
                                 • J. Melendez, identified as ID No. 0708622, , in pro per  
                                 c/o Taxpayer Advocate Service; PO Box 1640; Ogden, UT 84402-1640  
                                 • John/Jane Doe, identified as Tax Examiner MS 4388, , in pro per  
                                 c/o Ogden Service Center; PO Box 9941, Stop 1005; Ogden, Utah 84409  
                                 • Jane Doe, a/k/a Brenda Dial assumed robo signer, , in pro per  
                                 c/o Ogden Service Center; PO Box 9941, Stop 1005; Ogden, Utah 84409

An Action at Law has been filed against you. Within 20 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached action (**MOTIONS ARE NOT PERMITTED UNDER COMMON LAW**). **Defendant is presently in default and must show cause why judgment should not issue.**

**Remedy for every injury** William Blackstone - a legal maxim - Every right when with-held must have a remedy, and every injury it's proper redress "... *In the third volume of his Commentaries, page 23, Blackstone states two cases in which a remedy is afforded by mere operation of law. "In all other cases," he says, it is a general and indisputable rule that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded. And afterwards, page 109 of the same volume, he says, I am next to consider such injuries as are cognizable by the Courts of common law. And herein I shall for the present only remark that all possible injuries whatsoever that did not fall within*

<sup>1</sup> AT LAW. Blacks 4th This phrase is used to point out that a thing is to be done according to the course of the common law; it is distinguished from a proceeding in equity

<sup>2</sup> IN PRO PER. (Black's Law 4<sup>th</sup>) "in person"

*the exclusive cognizance of either the ecclesiastical, military, or maritime tribunals are, for that very reason, within the cognizance of the common law courts of justice, for it is a settled and invariable principle in the laws of England that every right, when withheld, must have a remedy, and every injury its proper redress"...* 5 U.S. 137, Marbury v. Madison

**Harmed by government** - *"The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury."* [Owen v. City of Independence]

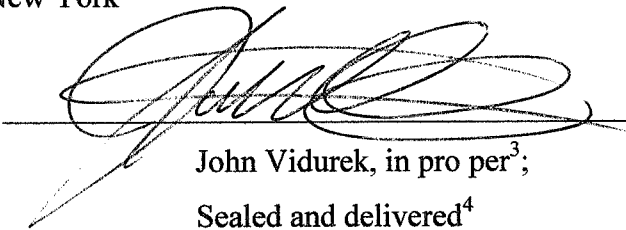
*"The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right."* - Marbury v. Madison, 5 U.S. 137 (1803)

*"... that statutes which would deprive a citizen of the rights of person or property without a regular trial, according to the course and usage of common law, would not be the law of the land."* - Hoke vs. Henderson, 15, N.C.15,25 AM Dec 677.; *"Henceforth the writ which is called Praecipe shall not be served on any one for any holding so as to cause a free man to lose his court".* [Magna Carta, Article 34].

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer with the court.

In an act of Good faith if the defendants performs their duty, before the expiration of 20 days by simply obeying the "Law of the Land" thereby correcting their records together with a "VERIFIED" letter of apology for the inconvenience caused the plaintiff with the proper determination that plaintiff was not required to file a tax return for the years in question to date, with predigest and close the matter; plaintiff withdraws this summons and action. Plaintiff must agree with the wording in writing in order to be in effect.

Dated: March 12, 2015; Dutchess County, New York

  
John Vidurek, in pro per<sup>3</sup>;  
Sealed and delivered<sup>4</sup>

<sup>3</sup> Most legal dictionaries define the term "pro se" as someone who represents them self. Black's Law 4th edition, 1891 defines it "in person", therefore we used the term "in pro per", in that capacity we accept the term "pro se" not to be confused with one representing their fiction whereby the jurisdictional fraud might be assumed and statutes applied as a subject.

<sup>4</sup> SEAL (Blacks 4th) A particular sign, made to attest in the most formal manner, the execution of an instrument. Merlin defines a seal to be a plate of metal with a flat surface, on which is engraved the arms of a prince or nation, or private individual, or other device, with which an impression may be made on paper or parchment in order to authenticate them. The impression thus made is also called a "seal." SEALED AND DELIVERED. These words, followed by the signatures of the witnesses, constitute the usual formula for the attestation of conveyances.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN VIDUREK,

Plaintiff,

-against-

JOHN KOSKINEN, ET AL.,

Defendants.

15-CV-2188 (LAP)

ORDER DIRECTING PAYMENT OF FEE OR  
IFP APPLICATION

LORETTA A. PRESKA, Chief United States District Judge:

Plaintiff brings this action *pro se*. Within thirty days of the date of this order, Plaintiff must either pay the \$400.00 in fees that are required to file a civil action in this court or submit a fully completed and signed request to proceed *in forma pauperis*, that is, without prepayment of fees (an “IFP application”).

To proceed with a civil action in this Court, a plaintiff must either pay \$400.00 in fees – a \$350.00 filing fee plus a \$50.00 administrative fee – or, to request authorization to proceed without prepayment of fees, submit a signed IFP application. *See* 28 U.S.C. §§ 1914, 1915.

Plaintiff submitted the complaint without the filing fees or an IFP application. Within thirty days of the date of this order, Plaintiff must either pay the \$400.00 in fees or submit the attached IFP application. If Plaintiff submits the IFP application, it should be labeled with docket number 15-CV-2188 (LAP). If the Court grants the IFP application, Plaintiff will be permitted to proceed without prepayment of fees. *See* 28 U.S.C. § 1915(a)(1).

The Clerk of Court is directed to assign this matter to my docket and mail a copy of this order to Plaintiff and note service on the docket. No summons shall issue at this time. If Plaintiff complies with this order, the case shall be processed in accordance with the procedures of the

EXHIBIT A



Clerk's Office. If Plaintiff fails to comply with this order within the time allowed, the action will be dismissed.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444–45 (1962) (holding that appellant demonstrates good faith when seeking review of a nonfrivolous issue).

SO ORDERED.

Dated: April 1, 2015  
New York, New York

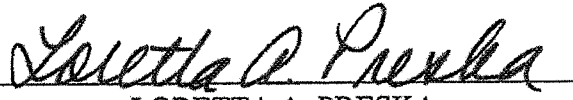
  
LORETTA A. PRESKA  
Chief United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

(Full name(s) of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

CV ( ) ( )

(Enter case number and initials of assigned judges, if available; if filing this with your complaint, you will not yet have a case number or assigned judges.)

(Full name(s) of the defendant(s)/respondent(s).)

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* ("IFP") (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☐ Yes ☐ No (If "No," go to Question 2.)

I am being held at: \_\_\_\_\_

Do you receive any payment from this institution? ☐ Yes ☐ No

Monthly amount: \_\_\_\_\_

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☐ No

If "yes," my employer's name and address are: \_\_\_\_\_

Gross monthly pay or wages: \_\_\_\_\_

If "no," what was your last date of employment? \_\_\_\_\_

Gross monthly wages at the time: \_\_\_\_\_

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

- (a) Business, profession, or other self-employment ☐ Yes ☐ No  
(b) Rent payments, interest, or dividends ☐ Yes ☐ No

- |   |                              |                             |
|---|------------------------------|-----------------------------|
| (c) Pension, annuity, or life insurance payments  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability or worker's compensation payments  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts or inheritances   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (g) Any other sources   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?
  
5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:
  
6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:
  
7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):
  
8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

*Declaration:* I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

_____		_____	
Dated		Signature	
_____		_____	
Name (Last, First, MI)		Prison Identification # (if incarcerated)	
_____	_____	_____	_____
Address	City	State	Zip Code
_____		_____	
Telephone Number		E-mail Address (if available)	



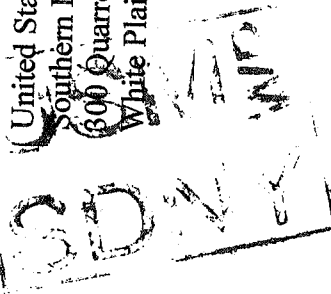
Mr John Vidurek  
1 South Dr  
Hyde Park NY 12538

**CERTIFIED MAIL™**



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United States District Court for the  
Southern District of New York  
300 Quarropas St,  
White Plains, NY 10601



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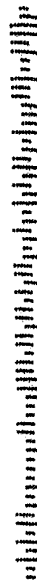


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